

Nikolas McKinnon

<div>Page 1</div> <div>IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA Civil Action No: 1:17-cv-1726-YK</div> <div>ELLEN GERHARD, et al., Plaintiffs, vs. DEPOSITION OF: NIKOLAS MCKINNON</div> <div>ENERGY TRANSFER PARTNERS, L.P., et al., Defendants.</div> <div>-----</div> <div>TRANSCRIPT of the stenographic notes of the proceedings in the above-entitled matter, as taken by and before STACEY J. ORLICK, a Certified Shorthand Reporter, License No. XI00226700, and Notary Public of the State of New Jersey, held via Zoom, on April 12, 2022, commencing at 10:14 a.m.</div>	<div>1 APPEARANCES:</div> <div>2</div> <div>3 WILLIAMS CEDAR</div> <div>4 1515 Market Street</div> <div>5 Suite 1300</div> <div>6 Philadelphia, Pennsylvania 19102</div> <div>7 BY: CHRISTOPHER MARKOS, ESQ.</div> <div>8 Attorneys for Plaintiff</div> <div>9 (215) 557-0099</div> <div>10 CMarkos@Williamcedar.com</div> <div>11</div> <div>12 RAIDERS LAW, PC</div> <div>13 606 N. 5th Street</div> <div>14 Reading, Pennsylvania 19601</div> <div>15 BY: RICHARD RAIDERS, ESQ.</div> <div>16 Attorneys for Plaintiffs</div> <div>17 (484) 509-2715</div> <div>18 Rich@Raiderslaw.com</div> <div>19</div> <div>20 LAVERY LAW</div> <div>21 225 Market Street</div> <div>22 Suite 304</div> <div>23 Harrisburg, Pennsylvania 17108</div> <div>24 BY: ELIZABETH L. KRAMER, ESQ.</div> <div>25 Attorneys for Defendant</div> <div>TIGERSWAN</div> <div>(717) 233-6633</div> <div>EKramer@Laverylaw.com</div> <div>McNEES, WALLACE & NURICK, LLC</div> <div>1000 Pine Street</div> <div>P.O. Box 1166</div> <div>Harrisburg, Pennsylvania 17108</div> <div>BY: ALAN R. BOYNTON, JR., ESQ.</div> <div>BY: STEPHANIE CARFLEY, ESQ.</div> <div>BY: KANDICE KERWIN HULL, ESQ.</div> <div>Attorneys for SUNOCO Defendants</div> <div>(717) 237-5248</div> <div>ABoynton@mcneeslaw.com</div> <div>SCarfley@mcneeslaw.com</div> <div>KHull@mcneeslaw.com</div>
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Nikolas McKinnon

Page 5	Page 6
<p>1 THE VIDEOGRAPHER: We are now on the record. My 2 name is Denzel Sinclair. I'm a videographer retained by 3 On the Record. This is a video deposition for the 4 United States District Court for the district of 5 Pennsylvania. Today's date is April 12, 2022. The time 6 is 10:14 a.m. in the matter of Gerhart versus Energy 7 Transfer Partners, et al. The deponent is Nikolas 8 McKinnon. All counsel will be noted on the record and 9 Stacey Orlick will now swear in the witness. 10 N I K O L A S M C K I N N O N, having been duly sworn 11 by the Notary Public, testified as follows: 12 EXAMINATION BY MR. MARKOS: 13 Q. Good morning, Nick. My name is Christopher 14 Markos. I'm an attorney representing the plaintiffs in 15 this case. We are here to take your deposition. I want 16 to give you a few sort of ground rules first for 17 everybody's benefit. Can you say and spell your name 18 for the record. 19 A. Nikolas, N-i-k-o-l-a-s, last name McKinnon, 20 M-c-K-i-n-n-o-n. 21 Q. Have you ever been deposed before, Nick? 22 A. No. 23 Q. We used to do the face to face in person but 24 there's no difference practically when we do this over 25 Zoom. The ground rules are the same, and most important</p>	<p>1 is that we let each other finish our respective 2 questions and answers before the other person speaks. 3 The reason for that is because no accurate transcript 4 could be made of two people talking over each other. 5 It's also important that you let me finish my question 6 because while you may anticipate what I'm going to say, 7 it's a normal thing we do in conversations, it's 8 possible that I may be saying something slightly 9 different. That's another reason why it's important you 10 let me finish. Likewise, I will extend the same courtesy 11 to you and let you finish your answers before I jump in 12 with my next question or followup. 13 You were just sworn in. This deposition is being 14 used for a Civil Court proceeding. The same sort of 15 issues regarding your sworn testimony are in place today 16 just as if you were testifying in court. Do you 17 understand that? 18 A. I do. 19 Q. As you know, this is being videotaped just as 20 it's important for an accurate transcript in how when we 21 speak, how we speak is also important, so while you may 22 nod your head or shake your head it's still necessary 23 for you to verbalize your response because those are 24 ambiguous gestures and your verbal response will be 25 needed for the written transcript in this deposition.</p>
Page 7	Page 8
<p>1 Does that make sense to you? 2 A. It does. 3 Q. If you need to take a break, I don't think we'll 4 be exceptionally long today, but you can take a break at 5 any time as long as there's no question pending. If 6 there's a question pending, finish your answer and you 7 can take a short break. Do you have any questions about 8 what I have just reviewed? 9 A. No. 10 Q. Nick, do you have an attorney representing you 11 today? 12 A. I do not. 13 Q. Did you have an opportunity to seek counsel for 14 this deposition? 15 A. Yes. 16 Q. Can you tell me where you live? 17 A. I live in Spotsylvania, Virginia. 18 Q. If you know, is that more than 100 miles from 19 Harrisburg? 20 A. Yes. 21 Q. We are asking you about your work background, so 22 let's start with TigerSwan and work backwards. When did 23 you start working for TigerSwan? 24 A. I think it was October 2016, I believe. 25 Q. Were you hired as an employee?</p>	<p>1 A. No, an independent contractor. 2 Q. At some point in time did you become an 3 employee? 4 A. Yes. 5 Q. How did that get formalized? 6 A. With an employment agreement. 7 Q. Do you recall when that happened? 8 A. January 2018. 9 Q. From January '18 -- do you still work for 10 TigerSwan today? 11 A. No. 12 Q. When with did you leave your employment with 13 TigerSwan? 14 A. July 2018. 15 Q. Were you fired by TigerSwan? 16 A. No, I left on my own accord. 17 Q. Before you became an independent contractor in 18 2016 with TigerSwan, what was your employment? 19 A. I'm an independent contractor for different 20 government contracts, mostly military. 21 Q. Do you have military service experience? 22 A. Yes. 23 Q. What branch did you serve in? 24 A. Navy. 25 Q. For what period of time?</p>

Nikolas McKinnon

Page 9	Page 10
<p>1 A. '98 to 2004.</p> <p>2 Q. What was your rank?</p> <p>3 A. I was an E-5, second class petty officer.</p> <p>4 Q. E means enlisted?</p> <p>5 A. Correct.</p> <p>6 Q. When you left the military, did you become an</p> <p>7 independent contractor?</p> <p>8 A. Yes.</p> <p>9 Q. Your independent contractor work, is it fair to</p> <p>10 say that that was in the defense industry?</p> <p>11 A. Yes.</p> <p>12 Q. Were there any other industries that you worked</p> <p>13 in?</p> <p>14 A. Yes, I have also worked in private enterprise</p> <p>15 for different -- I would say high profile VIP</p> <p>16 individuals or families.</p> <p>17 Q. Performing what services?</p> <p>18 A. Mostly protection in the form of gathering</p> <p>19 intelligence and/or providing sort of an outer bubble,</p> <p>20 that is, works dynamically with the executive protection</p> <p>21 team. It provides like a counter surveillance bubble</p> <p>22 that gives indications and warnings to the executive</p> <p>23 protection team.</p> <p>24 Q. You were providing security services; is that</p> <p>25 right?</p>	<p>1 A. Essentially.</p> <p>2 Q. Were security services the sort of genre of your</p> <p>3 work between living the military and joining TigerSwan?</p> <p>4 A. That's a general term I guess we could use.</p> <p>5 Q. That's fair to use?</p> <p>6 A. Yes.</p> <p>7 Q. Did you go to college?</p> <p>8 A. I have.</p> <p>9 Q. Where did you go to college?</p> <p>10 A. Multiple different places.</p> <p>11 Q. Where did you graduate from?</p> <p>12 A. I have a semester left.</p> <p>13 Q. I want to ask how you gained experience and</p> <p>14 training in providing security services.</p> <p>15 A. How did I gain the experience?</p> <p>16 Q. Right.</p> <p>17 A. Well, I mean through the military, different</p> <p>18 schools, on-the-job training and duty. During my</p> <p>19 military service I received training at different</p> <p>20 schools and also on the job you learn a lot about</p> <p>21 security and other things as you're securing the nation,</p> <p>22 and then follow on training when I left the military</p> <p>23 into the independent contracting world.</p> <p>24 Q. What year did you leave the military?</p> <p>25 A. 2004.</p>
Page 11	Page 12
<p>1 Q. Honorable discharge?</p> <p>2 A. Yes.</p> <p>3 Q. Did you receive on the job security training by</p> <p>4 TigerSwan?</p> <p>5 A. No.</p> <p>6 MS. KRAMER: Object to form.</p> <p>7 Q. When you joined TigerSwan, what were you</p> <p>8 specifically hired to do?</p> <p>9 A. Initially the product I worked on was the Dakota</p> <p>10 Access Pipeline, also known as DAPL, and I was -- I</p> <p>11 think I originally started as an intelligence analyst</p> <p>12 and eventually was a deputy program manager.</p> <p>13 Q. How long did you do that, DAPL related work?</p> <p>14 A. About a year.</p> <p>15 Q. At some point in time you shifted focus to</p> <p>16 Mariners two; is that fair?</p> <p>17 A. Yes, I was asked by TigerSwan to leave, or</p> <p>18 actually, I left a project in New York that they had me</p> <p>19 working on and they asked me to take over for the guy</p> <p>20 who was the senior security adviser in Pennsylvania for</p> <p>21 ME2, Mariner East two.</p> <p>22 Q. Do you draw any distinction in your mind between</p> <p>23 Mariners Two and Mariners two X?</p> <p>24 MS. KRAMER: Object to form.</p> <p>25 Q. When were you assigned to take over security</p>	<p>1 advising on Mariner East Two?</p> <p>2 A. It had to be the summer of '16 or my dates are a</p> <p>3 little off. I'm thinking it was the summer of 2016,</p> <p>4 something like that.</p> <p>5 Q. Are you approximating?</p> <p>6 A. I am.</p> <p>7 Q. Can you describe to us what your job</p> <p>8 responsibilities were at overseeing security for Mariner</p> <p>9 East Two?</p> <p>10 A. My main objective was to assess any security</p> <p>11 risks, potential risks, for Energy Transfer, the client</p> <p>12 of TigerSwan.</p> <p>13 Q. Does security risk include risks to people</p> <p>14 working on the construction of the pipeline?</p> <p>15 A. Yes.</p> <p>16 Q. Does it include risks to the equipment being</p> <p>17 used to construct the pipeline?</p> <p>18 A. Yes.</p> <p>19 Q. I would assume it also includes risks to the</p> <p>20 pipeline infrastructure itself?</p> <p>21 A. Yes.</p> <p>22 Q. How long were you involved in security for</p> <p>23 Mariner East Two?</p> <p>24 A. It's about 18 months, I believe. Again, I'm</p> <p>25 approximating, 14 to 18 months, something like that.</p>

Nikolas McKinnon

Page 13	Page 14
<p>1 Q. Was your job with DAPL the same in general</p> <p>2 terms, was it the same as your job with Mariner East</p> <p>3 two?</p> <p>4 MS. KRAMER: Object to form.</p> <p>5 A. No, I would say they were two very different</p> <p>6 projects.</p> <p>7 Q. Did you ever have an opportunity or did you ever</p> <p>8 read the complaint filed in this case?</p> <p>9 A. I have read it.</p> <p>10 Q. How recently or not recently?</p> <p>11 A. I would say three weeks to a month ago.</p> <p>12 Q. When you were senior security adviser for</p> <p>13 Mariner East two working for TigerSwan, is that -- while</p> <p>14 you were in that role, is that when you transitioned</p> <p>15 from independent contractor to an employee?</p> <p>16 A. Yes.</p> <p>17 Q. When you were an independent contractor, did you</p> <p>18 have a TigerSwan e-mail address?</p> <p>19 A. Yes.</p> <p>20 Q. Did you carry the same e-mail address over when</p> <p>21 you became an employee?</p> <p>22 A. Yes.</p> <p>23 Q. When you were an independent contractor, were</p> <p>24 your business expenses reimbursed?</p> <p>25 A. Yes.</p>	<p>1 Q. Were they reimbursed in your sort of gross</p> <p>2 payment or were they reimbursed separately?</p> <p>3 MS. KRAMER: Object to form.</p> <p>4 A. Separately.</p> <p>5 Q. Was that the same arrangement for reimbursement</p> <p>6 of your business expenses when you became an employee?</p> <p>7 A. Yes. It might have been different forms or</p> <p>8 paperwork. I don't recall, but I was reimbursed for any</p> <p>9 fuel or other businesses expenses that one would incur</p> <p>10 while working at a remote location, not an office.</p> <p>11 Q. I'm going to share a document via the share</p> <p>12 screen function. It is marked as attorney's eyes only,</p> <p>13 but you wrote this, but I will maintain that it's</p> <p>14 accepted from the confidentiality agreement. Showing</p> <p>15 him is accepted. Do you recognize this document, Nik?</p> <p>16 A. I do now.</p> <p>17 Q. I'm going to give you a chance to read it so I</p> <p>18 will scroll down and you tell me when you are ready?</p> <p>19 MS. KRAMER: What's the date on this report?</p> <p>20 MR. MARKOS: May 30, 2017 and the date stamp is</p> <p>21 TigerSwan 64 to 69.</p> <p>22 A. I'm done reading that.</p> <p>23 Q. The date here was May 30, 2017. Nik, does this</p> <p>24 date in reviewing the document, help you pinpoint when</p> <p>25 you started your role as senior security adviser with</p>
Page 15	Page 16
<p>1 Mariner East two?</p> <p>2 A. It must have been in spring 2017.</p> <p>3 Q. I'm going to ask you for some of the, for lack</p> <p>4 of a better word, jargon in here.</p> <p>5 A. Yes.</p> <p>6 Q. Do you see where it says ERE's?</p> <p>7 A. Yes.</p> <p>8 Q. What are ERE's?</p> <p>9 A. I was actually trying to remember myself,</p> <p>10 environmental -- I was trying to remember myself as I</p> <p>11 was reading it, but it was something -- I think it was</p> <p>12 environmental radical something. I don't remember</p> <p>13 honestly.</p> <p>14 Q. Do you see here where it says SSA, is that you,</p> <p>15 senior security adviser?</p> <p>16 A. It is.</p> <p>17 Q. Anti FERC narrative, is that the federal agency?</p> <p>18 A. Yes, FERC.</p> <p>19 Q. ROW is right-of-way?</p> <p>20 A. Yes. That's bothering me. Environmental</p> <p>21 radical elements or something to that affect.</p> <p>22 Q. That's the flavor of it, in other words?</p> <p>23 A. Yes, I just can't remember if that's the exact</p> <p>24 -- what the acronym exactly meant, but that was the</p> <p>25 flavor, yes.</p>	<p>1 Q. Did you create the acronym?</p> <p>2 A. Not to my knowledge, no.</p> <p>3 Q. Was it in use by TigerSwan when you took over</p> <p>4 the role of senior security adviser for Mariner East</p> <p>5 two?</p> <p>6 MS. KRAMER: Object to form.</p> <p>7 A. It had to have been if I used it and I didn't</p> <p>8 create it.</p> <p>9 Q. I'm back on the first page. Who did you write</p> <p>10 this report for?</p> <p>11 A. For Energy Transfer ultimately.</p> <p>12 Q. How was it delivered to them?</p> <p>13 A. I think at this point I would send -- because</p> <p>14 this was early on in my tenure on ME2, Mariner East, I</p> <p>15 would send this back to Apex, Apex is like where</p> <p>16 TigerSwan is headquartered, they would do a quality</p> <p>17 assurance kind of QA check on it, and then they would</p> <p>18 e-mail it to the ETP folks at this point. I think at</p> <p>19 some point I was going direct to ETP and I copied</p> <p>20 TigerSwan Apex folks.</p> <p>21 Q. When you would send these kind of reports</p> <p>22 directly to ETP, do you remember who you sent them to?</p> <p>23 A. I want to say there was a mailing list. It was</p> <p>24 a pretty big list at one point and then it changed over</p> <p>25 the course of time, but there were, to my recollection,</p>

Nikolas McKinnon

Page 17	Page 18
<p>1 multiple individuals that would receive this.</p> <p>2 MR. MARKOS: For the record, we'll mark this as</p> <p>3 Exhibit 1.</p> <p>4 Q. Who is Tim Beckman, if you know?</p> <p>5 A. Tim was an intelligence analyst that worked out</p> <p>6 of TigerSwan headquarters in Apex.</p> <p>7 Q. That's Apex, North Carolina, right?</p> <p>8 A. Apex, North Carolina, correct.</p> <p>9 Q. I'm putting up another document, EF TigerSwan</p> <p>10 1915 and 1916. The first page this is for the benefit</p> <p>11 of counsel. It will show the next page was drafted by</p> <p>12 the witness. Here is the page I wanted you to look,</p> <p>13 tell me when you're ready, just this one page, DF 1916?</p> <p>14 A. Yeah, I'm ready.</p> <p>15 Q. Did you draft this document?</p> <p>16 A. If it has my name on it I drafted it.</p> <p>17 Q. Do you see the link in the middle of the page</p> <p>18 that Facebook.com/PA progress?</p> <p>19 A. Yes.</p> <p>20 Q. Do you know what that web site is?</p> <p>21 A. From what I recall that was a made up account or</p> <p>22 organization by folks back in Apex.</p> <p>23 Q. Meaning by TigerSwan?</p> <p>24 A. Correct.</p> <p>25 MS. KRAMER: Objection to form.</p>	<p>1 Q. Do you know who was involved with PA progress?</p> <p>2 A. To my recollection it would have been Rob Rice</p> <p>3 for sure. I don't know of anyone else specifically</p> <p>4 involved, but it's a small office so there could have</p> <p>5 been other individuals involved as well.</p> <p>6 Q. This report you see the date on the top, 26th,</p> <p>7 June, 2017?</p> <p>8 A. Yes.</p> <p>9 Q. At the time you drafted this document, were you</p> <p>10 aware of PA Progress?</p> <p>11 A. I don't recall.</p> <p>12 Q. Were you aware of TigerSwan's involvement in PA</p> <p>13 Progress in June 2017?</p> <p>14 MS. KRAMER: Object to form.</p> <p>15 A. I don't recall. All I can say is I don't</p> <p>16 remember specifically. I just know that at some point I</p> <p>17 was knowledgeable of it.</p> <p>18 Q. Fair enough. Do you see a new page?</p> <p>19 A. Yes.</p> <p>20 Q. This will be Exhibit-3. It's quite long. Tell</p> <p>21 me when to scroll.</p> <p>22 A. Go ahead. Okay. Okay. Okay.</p> <p>23 Q. Have you seen this document before?</p> <p>24 A. It looks familiar.</p> <p>25 Q. Do you recall where you saw it?</p>
Page 19	Page 20
<p>1 A. I assume it was e-mailed to me at some point.</p> <p>2 Q. While you were working at TigerSwan?</p> <p>3 A. Correct.</p> <p>4 MS. KRAMER: Objection to the form.</p> <p>5 Q. Have you seen these images independent of this</p> <p>6 document?</p> <p>7 A. I mean, some look familiar maybe from Facebook,</p> <p>8 but otherwise, no.</p> <p>9 Q. Do you see the photographs of Kari Smitherman</p> <p>10 and Sparrow?</p> <p>11 A. Yes.</p> <p>12 Q. You were familiar with the complaint about a</p> <p>13 month ago?</p> <p>14 A. Yes.</p> <p>15 Q. Do you recall there's an allegation in the</p> <p>16 complaint that an "infiltrator" was sent on to the</p> <p>17 Gerhart property?</p> <p>18 A. Yes.</p> <p>19 Q. Do you have any information independent of what</p> <p>20 the complaint says about somebody sent on to the Gerhart</p> <p>21 property by TigerSwan?</p> <p>22 MS. KRAMER: Object to form.</p> <p>23 A. There was someone that was sent to Camp White</p> <p>24 Pine.</p> <p>25 Q. Do you recall when that happened?</p>	<p>1 A. Not the exact time period. I remember it was</p> <p>2 warm still, so probably summer 2017 sometime.</p> <p>3 Q. Was it one or more than one person?</p> <p>4 A. One person.</p> <p>5 Q. For what purpose was that person sent to Camp</p> <p>6 White Pine?</p> <p>7 A. To collect intelligence.</p> <p>8 MS. KRAMER: Objection.</p> <p>9 Q. Did that person report to you?</p> <p>10 MS. KRAMER: Objection to form.</p> <p>11 A. Not to me directly. I did not oversee anyone at</p> <p>12 that point in time, not any human being.</p> <p>13 Q. Do you know who the person was?</p> <p>14 A. I know it was a female, a white female,</p> <p>15 approximately 5'6", probably 145. I don't recall her</p> <p>16 name.</p> <p>17 Q. Did she use her real name in the camp?</p> <p>18 MS. KRAMER: Object to form.</p> <p>19 A. No, I wouldn't imagine she would. That would</p> <p>20 kind of go against what her objective was.</p> <p>21 Q. Do you know if she was in the camp or if she</p> <p>22 went to the home, the Gerhard home?</p> <p>23 MS. KRAMER: Object to form.</p> <p>24 A. I recall both and just based on what I remember</p> <p>25 of the setup of kind of the landscape and the geography</p>

Nikolas McKinnon

<p style="text-align: right;">Page 21</p> <p>1 you had to go to the home and then to access the camp</p> <p>2 you would have to be on the Gerhart property if you</p> <p>3 weren't part of construction and then access the camp</p> <p>4 from their home. If you were part of construction there</p> <p>5 was an easement on the far side of the right-of-way that</p> <p>6 you could access the camp area which was the</p> <p>7 right-of-way.</p> <p>8 Q. Do you know whether this woman lived for a</p> <p>9 period of time at the camp?</p> <p>10 A. I don't recall her ever living there. I</p> <p>11 remember her making a couple of visits, but never spent</p> <p>12 the night or anything like that.</p> <p>13 Q. Do you know what information she gathered and</p> <p>14 provided to TigerSwan?</p> <p>15 MS. KRAMER: Object to form.</p> <p>16 A. I would assume that document probably was -- so</p> <p>17 all of that information was collected, the layout of the</p> <p>18 tree sits and how they were utilizing those. That's</p> <p>19 about all I can remember.</p> <p>20 Q. Do you know if TigerSwan -- this woman was used</p> <p>21 to gather intelligence you said, right?</p> <p>22 A. Correct.</p> <p>23 Q. Did TigerSwan use anybody to gather intelligence</p> <p>24 from Camp White Pine from outside Camp White Pine?</p> <p>25 MS. KRAMER: Object to form.</p>	<p style="text-align: right;">Page 22</p> <p>1 A. Yes.</p> <p>2 Q. Was it a TigerSwan employee?</p> <p>3 MS. KRAMER: Object to form.</p> <p>4 A. I don't know. I mean, even -- open source</p> <p>5 intelligence is essentially just looking at Facebook so</p> <p>6 if you have an open Facebook account or if you have an</p> <p>7 open group that's on Facebook, even I can access, and at</p> <p>8 this point I would have been an independent contractor.</p> <p>9 I could look at Camp White Pine or you can look at</p> <p>10 anyone on the planet who has Facebook if their privacy</p> <p>11 settings are not set, so that someone who is not their</p> <p>12 friend or -- I haven't been on social media for like</p> <p>13 five or six years, so whatever the tech terms are for</p> <p>14 the privacy settings you can look at anyone's account</p> <p>15 and glean information from that.</p> <p>16 Q. I appreciate your answer. I was trying to ask</p> <p>17 something different, so the person you said went to Camp</p> <p>18 White Pine was an individual gathering intelligence</p> <p>19 through their senses; is that fair?</p> <p>20 MS. KRAMER: Objection to form.</p> <p>21 A. Yes, when you have a human make contact with a</p> <p>22 -- what's the word I'm looking for, a group that you are</p> <p>23 interested in for whatever reason, that's called human</p> <p>24 intelligence or human is the acronym.</p> <p>25 Q. Did TigerSwan utilize human intelligence for</p>
<p style="text-align: right;">Page 23</p> <p>1 Camp White Pine outside of the Gerhart property?</p> <p>2 MS. KRAMER: Object to form.</p> <p>3 A. Outside of the Gerhart property? Yes.</p> <p>4 Q. Let me pull that document back up. That might</p> <p>5 help.</p> <p>6 A. I remember. The individual went to -- I think</p> <p>7 she had somebody in a laundromat where she made contact</p> <p>8 with someone, coffee shop where she made someone with</p> <p>9 someone, so there were multiple places in the Huntington</p> <p>10 area that this person was collecting intelligence or</p> <p>11 information to pass back to TigerSwan.</p> <p>12 Q. As far as you know, it was just the one person?</p> <p>13 MS. KRAMER: Objection to form.</p> <p>14 A. As far as I know, yes.</p> <p>15 Q. The next document is dated June 20, 2017</p> <p>16 TigerSwan 81 through 85 and we'll mark it as Exhibit-4.</p> <p>17 Tell me when you are ready for me to scroll.</p> <p>18 A. Environmental rights extremists is what ERE</p> <p>19 means. Okay. Okay.</p> <p>20 Q. I actually only have a question with reference</p> <p>21 to the helicopter. One thing is clear. The first page</p> <p>22 has your name on it and you are identified as the senior</p> <p>23 security adviser?</p> <p>24 A. Yes.</p> <p>25 Q. There's another name, the chief security</p>	<p style="text-align: right;">Page 24</p> <p>1 officer?</p> <p>2 A. Yes.</p> <p>3 Q. In your role as senior security adviser -- one</p> <p>4 of your roles as senior security adviser was to draft</p> <p>5 these SITREPs?</p> <p>6 A. Yes.</p> <p>7 Q. Is it fair to assume if your name is on it you</p> <p>8 wrote it?</p> <p>9 MS. KRAMER: Object to form.</p> <p>10 A. Yes.</p> <p>11 Q. On the second page of the documents under</p> <p>12 highlights you talked about a recent helicopter activity</p> <p>13 conducted by a private charter company, do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. On the next page of the document you identify</p> <p>16 the helicopter as being flown by Air Chopper LLC?</p> <p>17 A. Yes.</p> <p>18 Q. Do you recall this specific helicopter or the</p> <p>19 flight?</p> <p>20 MS. KRAMER: Object to form.</p> <p>21 A. Not specifically because there were multiple</p> <p>22 helicopter fly overs of the runway throughout my tenure</p> <p>23 there.</p> <p>24 Q. Were those fly overs coordinated by TigerSwan?</p> <p>25 MS. KRAMER: Object to form.</p>

Nikolas McKinnon

Page 25	Page 26
<p>1 A. No, TigerSwan doesn't own helicopters as far as</p> <p>2 I know.</p> <p>3 Q. I understand that answer, but as part of the</p> <p>4 security services that were being provided to Energy</p> <p>5 Transfer, was TigerSwan coordinating helicopter fly</p> <p>6 overs of the east coast?</p> <p>7 A. No.</p> <p>8 MS. KRAMER: Objection to form.</p> <p>9 Q. How did you come to learn that the helicopter</p> <p>10 and the fly over was owned by Air Chopper LLC?</p> <p>11 A. I'm trying to remember. I don't recall</p> <p>12 specifically. I can only make assumptions. I don't</p> <p>13 know if you want those or not.</p> <p>14 Q. I just asked about helicopters, but I have</p> <p>15 another related question. Did TigerSwan fly drones over</p> <p>16 the easement?</p> <p>17 A. I don't remember anyone associated with</p> <p>18 TigerSwan ever flying drones, no.</p> <p>19 Q. I'm going to pull up the second amended</p> <p>20 complaint. Unless anybody objects, I wasn't planning on</p> <p>21 marking it. Do you see paragraph 147?</p> <p>22 A. I do.</p> <p>23 Q. It says, "posts on Facebook falsely ascribe to</p> <p>24 Elise Gerhart claims that the helicopter flown over the</p> <p>25 Gerhart property are of rush and origin"?</p>	<p>1 A. Yes.</p> <p>2 Q. Does that paragraph have any connection to the</p> <p>3 report of the helicopter that we just looked at, the</p> <p>4 June 20th SITREP?</p> <p>5 A. Most likely, but again, there are multiple times</p> <p>6 that the right-of-way was flown by a helicopter, but I</p> <p>7 think the time frame based on that report and then the</p> <p>8 report we got from the human intelligence aspect that</p> <p>9 was ongoing at that time would -- that's when the rush</p> <p>10 and origin information came out.</p> <p>11 Q. If I understand you correctly, the rush and</p> <p>12 origin information was provided -- the comment about</p> <p>13 rush and origin was provided to TigerSwan by this human</p> <p>14 intelligence person?</p> <p>15 MS. KRAMER: Objection to form.</p> <p>16 A. Initially, yes.</p> <p>17 Q. Not to get distracted. Do you know the name</p> <p>18 Kurt Meriweather?</p> <p>19 A. Doesn't ring a bell.</p> <p>20 Q. What about Cedar Fork Partners?</p> <p>21 A. No.</p> <p>22 Q. Do you know the name Nick or Nicholas Johnson?</p> <p>23 A. Yes.</p> <p>24 Q. Do you know the name Nate Johnson?</p> <p>25 A. No.</p>
Page 27	Page 28
<p>1 Q. How do you know the name Nicholas Johnson?</p> <p>2 A. I'm pretty certain I was in communication with</p> <p>3 him. I think he worked in Apex or he was an independent</p> <p>4 contractor that worked remotely for TigerSwan, one of</p> <p>5 the two.</p> <p>6 Q. For what purpose were you in communication with</p> <p>7 him?</p> <p>8 A. He was also an intel analyst type, so anybody</p> <p>9 who was in the intel analyst position would support the</p> <p>10 folks that were on the ground at a certain project to</p> <p>11 provide kind of a summary of all the open source</p> <p>12 information.</p> <p>13 Q. As a senior security adviser, were you working</p> <p>14 in Pennsylvania physically?</p> <p>15 A. Yes.</p> <p>16 Q. In that role, did you have direct supervision</p> <p>17 over those intel analysts, that group you just talked</p> <p>18 about?</p> <p>19 MS. KRAMER: Object to form. I don't think he</p> <p>20 specified what project he was referring to on that.</p> <p>21 MR. MARKOS: On what?</p> <p>22 MS. KRAMER: The whole line of questioning is</p> <p>23 unclear, but that's fine.</p> <p>24 Q. During what period of time were you in contact</p> <p>25 with Nick Johnson?</p>	<p>1 A. During the time I worked on the ME2 project and</p> <p>2 potentially before that on DAPL, but I don't recall</p> <p>3 exactly.</p> <p>4 Q. As the senior security adviser for the ME2</p> <p>5 pipeline, did you have direct supervisory authority over</p> <p>6 -- what do you say his role was, Nick Johnson's?</p> <p>7 A. I believe intel analyst.</p> <p>8 Q. As senior security adviser for the ME2 pipeline,</p> <p>9 did you have supervisory authority over intel analysts</p> <p>10 at TigerSwan?</p> <p>11 MS. KRAMER: Objection to form.</p> <p>12 A. I did not.</p> <p>13 Q. Did you rely on their work in order to perform</p> <p>14 your job functions?</p> <p>15 A. Not necessarily. My understanding was that</p> <p>16 Energy transfer or what was Sunoco and then became</p> <p>17 Energy Transfer was paying TigerSwan for certain</p> <p>18 products or skill sets that they could provide to Energy</p> <p>19 Transport. Does that make sense?</p> <p>20 Q. I think I understand.</p> <p>21 A. My job didn't depend on that intelligence</p> <p>22 reporting specifically, but it was a promised service of</p> <p>23 my understanding in the contract relationship between</p> <p>24 TigerSwan and Energy Transfer.</p> <p>25 Q. We talked about the PA progress before. Would</p>

Nikolas McKinnon

Page 29	Page 30
<p>1 you include PA Progress in those promised services?</p> <p>2 MS. KRAMER: Object to form of the.</p> <p>3 A. I don't -- that one to me is a little different</p> <p>4 because nobody from Energy Transfer that I ever recall</p> <p>5 speaking to ever asked for that type of service, nor did</p> <p>6 they really -- they didn't think it was beneficial in</p> <p>7 the long run, so I'm not sure why or who directed PA</p> <p>8 Progress or any other web site or pro pipeline narrative</p> <p>9 articles to be published. I'm not sure who directed</p> <p>10 that.</p> <p>11 Q. Are you talking about you're not sure who at</p> <p>12 Energy Transport?</p> <p>13 A. No, who at TigerSwan directed that. It wouldn't</p> <p>14 have been anybody at Energy Transfer that directed that.</p> <p>15 Q. When you were the senior security adviser for</p> <p>16 TigerSwan, was TigerSwan providing services to any other</p> <p>17 entity besides Energy Transfer/Sunoco?</p> <p>18 MS. KRAMER: Object to form.</p> <p>19 A. Yes.</p> <p>20 Q. For Mariner East two?</p> <p>21 A. No.</p> <p>22 Q. Was one of your responsibilities as the Mariner</p> <p>23 East two senior security adviser to discover whether</p> <p>24 Camp White Pine was a security threat as we defined</p> <p>25 security threat earlier?</p>	<p>1 A. Yes.</p> <p>2 Q. Did you make such a determination?</p> <p>3 A. At some point, but I don't remember. It may</p> <p>4 have even fluctuated because that's the way risk</p> <p>5 analysis sometimes work is that hypothetically in</p> <p>6 January you may assess that something is a high risk and</p> <p>7 in February for whatever reason the high risk turns into</p> <p>8 a low risk and in March it goes back up to a high risk,</p> <p>9 so at some point, yeah, I think there were multiple</p> <p>10 analyses or determinations made throughout the time</p> <p>11 period I was on the project.</p> <p>12 Q. Was there a point when you determined Camp White</p> <p>13 Pine was not a security threat or risk?</p> <p>14 A. Yes.</p> <p>15 Q. Do you recall when?</p> <p>16 A. I don't remember exactly, but I want to say it</p> <p>17 was nearing -- it was probably winter 2018, nearing the</p> <p>18 spring.</p> <p>19 Q. Did you utilize any communication apps for work</p> <p>20 related communication while you were senior security</p> <p>21 adviser for ME2?</p> <p>22 A. Communication apps, yes.</p> <p>23 Q. Was one of those WhatsApp?</p> <p>24 A. Yes.</p> <p>25 Q. Were there other apps?</p>
Page 31	Page 32
<p>1 A. Not for that project, no, not that I recall.</p> <p>2 That seemed to be the favorite app of TigerSwan to use</p> <p>3 among all the other texting communication apps</p> <p>4 available.</p> <p>5 Q. While you were senior security adviser for</p> <p>6 Mariner East two, do you know if TigerSwan played light</p> <p>7 towers or any other lighting devices on or near the</p> <p>8 Gerhart easement?</p> <p>9 MS. KRAMER: I object to form.</p> <p>10 A. You broke up a little bit there.</p> <p>11 Q. During your time as senior security adviser for</p> <p>12 Mariner East two, did TigerSwan utilize light towers or</p> <p>13 other sort of lighting devices on the easement near the</p> <p>14 Gerhart property?</p> <p>15 MS. KRAMER: Object to form.</p> <p>16 A. Yes.</p> <p>17 Q. Can you describe those devices?</p> <p>18 A. There's only one that I recall. It was a light</p> <p>19 tower that was connected to a video monitoring device</p> <p>20 that could be triggered for the video to come on with</p> <p>21 geofences, so its main purpose was to detect anyone who</p> <p>22 came on to the right of way at night.</p> <p>23 Q. Were the lights also activated by geofencing?</p> <p>24 A. I can't remember if the light activated for</p> <p>25 motion or if it was left on all night. I don't</p>	<p>1 remember.</p> <p>2 Q. Were you ever involved in drafting security</p> <p>3 plans for the Mariner East two project?</p> <p>4 A. Yes, to a certain extent.</p> <p>5 Q. In general, can you describe what a security</p> <p>6 plan is in relation to a pipeline project?</p> <p>7 A. It would be a brief in the sense of -- so that</p> <p>8 others can read it and it would lay out what type of</p> <p>9 security presence would be in a certain area, what the</p> <p>10 safety protocols were, kind of the dos and do nots for</p> <p>11 the individuals that would be participating in the</p> <p>12 security. Also include any devices that may be used</p> <p>13 such as the one I described about a minute ago or hand</p> <p>14 held cameras, for example. I think that sums it up.</p> <p>15 Q. That lighting device, do you know how much light</p> <p>16 it could produce?</p> <p>17 A. It was -- I don't remember the lumens exactly,</p> <p>18 but it was directed in a very specific direction, area</p> <p>19 on the right-of-way so that it would only illuminate, as</p> <p>20 far as I remember, the entrance on to the right-of-way</p> <p>21 from the Gerhart property, so where the Gerhart property</p> <p>22 ended and imminent domain took over, that's where the</p> <p>23 light was pointed toward.</p> <p>24 Q. I asked you about security plans. In your role</p> <p>25 as senior security adviser, did you also recommend how</p>

Nikolas McKinnon

<p style="text-align: right;">Page 33</p> <p>1 much security manpower was needed if that question makes 2 sense? 3 A. Sometimes. 4 Q. Did you do that with respect to the Gerhart 5 property? 6 A. I think I came up with an initial recommendation 7 and then it was discussed, obviously, because there's 8 multiple parties involved among Energy Transfer and 9 TigerSwan, and the other security companies that were 10 involved for that particular right-of-way section 11 because those are all the people that stood to make 12 money or save money from that particular right-of-way 13 section, so my recommendation was overseen by multiple 14 entities. It was criticized or edited and eventually 15 they settled on a number of personnel. 16 Q. In your experience in the security industry, are 17 you familiar with the term anarchist and the concept of 18 anarchy? 19 MS. KRAMER: Object to form. 20 A. Yes. 21 Q. Does either necessarily denote violence? 22 MS. KRAMER: Object to form. 23 A. I think in common parlance the understanding of 24 anarchist and even myself included at the time of ME2 25 just the ideology of anarchist there was a sense of</p>	<p style="text-align: right;">Page 34</p> <p>1 violence that went along with anarchy just in common 2 parlance, but then if you look into the actual ideology 3 of anarch or mono anarchism you find that it actually 4 doesn't involve violence, but I didn't find that out 5 until much later. 6 Q. How did you find that out? 7 A. From my own research interest. 8 Q. Were you still working at TigerSwan when you 9 found that out? 10 A. No, no, that was years later. 11 Q. If you had known that in 2017, would you have 12 made -- would that have changed your analysis of Camp 13 White Pine? 14 MS. KRAMER: Object to form. 15 A. I mean, I don't even know if I could articulate 16 the ideology very well right now, so I'm not sure I 17 would have been able to articulate that and sway any 18 minds in a different direction then. 19 Q. I understand your answer. 20 A. I mean, again, anarchy is depicted in movies and 21 television and just in our culture as a violent 22 ideology. 23 Q. Understood. TigerSwan's business is providing 24 security, is that fair to say? 25 A. Yes.</p>
<p style="text-align: right;">Page 35</p> <p>1 MS. KRAMER: Object to form. 2 Q. Does it go beyond that or is there more nuances 3 to it? 4 A. I mean, there are other companies that -- if you 5 are just talking about TigerSwan specifically? 6 Q. I am. 7 A. They provided myself as a security -- senior 8 security adviser, they provided security advisers who 9 eventually on the project reported to me, they provided 10 security guards later on down the road in different 11 areas not near the Gerharts, they provided the intel 12 intelligence updates, they provided the human 13 intelligence, they provided anything that they could 14 sell as an arm of an indication and warning. IMW is 15 what it's commonly referred to, then that's what they 16 would want to sell to the client, Energy Transfer. 17 Q. Are you saying that TigerSwan would exaggerate 18 security risks in order to continue to provide security 19 services? 20 MS. KRAMER: Object to form. 21 Q. To energy partners specifically? 22 MS. KRAMER: Object to form. 23 A. I think sometimes there was some elaboration 24 that went on. To what extent I don't recall, but at the 25 end of the day TigerSwan is just like every -- 99</p>	<p style="text-align: right;">Page 36</p> <p>1 percent of businesses they are for profit businesses 2 which they should be in our economy, and the longer they 3 can keep Energy Transfer on as a client of theirs then 4 the longer they could get paid where as even myself the 5 longer I could stay in my position the longer I kept my 6 job, so you try to do a good job and then there may also 7 be -- because it's consulting there may also be some 8 word play that's used that may invigorate a client to 9 keep you on longer. 10 Q. Did that invigoration occur with respect to 11 Energy Transfer? 12 MS. KRAMER: Object to form. 13 A. I mean, I don't remember it being like any 14 specific tactic that was discussed among the leadership 15 at TigerSwan in that form, but there definitely was a 16 push to keep Energy Transfer interested enough so that 17 they would keep TigerSwan on their payroll. 18 MR. MARKOS: Can we take a two- or three-minute 19 break? 20 THE VIDEOGRAPHER: The time is 11:23. We are 21 Off the record. 22 (Whereupon, an off the record discussion was 23 held.) 24 THE VIDEOGRAPHER: The time is 11:30. We are 25 now on the record.</p>

Nikolas McKinnon

<p style="text-align: right;">Page 37</p> <p>1 Q. I have a few more questions for you, Nik. I</p> <p>2 want to ask you a little more about the human intel</p> <p>3 person that was at Camp White Pine. I apologize if you</p> <p>4 answered this before, but I want to get a better sense</p> <p>5 what she looked like. Do you recall how old she was,</p> <p>6 approximately?</p> <p>7 A. Approximately 27 to 31.</p> <p>8 Q. Hair and eye color?</p> <p>9 A. Dirty blond. I don't recall eye color.</p> <p>10 Q. Do you know what name she used when she was</p> <p>11 talking to Camp White Pine folks?</p> <p>12 A. I don't remember.</p> <p>13 Q. Do you know who would know that?</p> <p>14 A. Anybody that works in Apex that was working</p> <p>15 during the time they supported Mariner East. I would</p> <p>16 assume. They have records because somebody had to pay</p> <p>17 her.</p> <p>18 Q. Was she able to walk without assistance, like a</p> <p>19 crutch or wheelchair?</p> <p>20 A. Yes.</p> <p>21 Q. Did she have any other distinguishing physical</p> <p>22 features like tattoos or eyeglasses?</p> <p>23 A. Not to my knowledge, none that I recall seeing.</p> <p>24 Q. Or piercings?</p> <p>25 A. No. I mean, I would assume her ears are</p>	<p style="text-align: right;">Page 38</p> <p>1 pierced, but I don't recall.</p> <p>2 Q. I asked you earlier about drones and</p> <p>3 helicopters. Did TigerSwan coordinate with the use of</p> <p>4 fixed wing aircraft to fly over the easement or DTP?</p> <p>5 MS. KRAMER: Object to form.</p> <p>6 A. Not to my knowledge, no.</p> <p>7 Q. Do you know who was in the role of senior</p> <p>8 security adviser when you took over or before you took</p> <p>9 over?</p> <p>10 A. Before I took over there was a guy name Al</p> <p>11 Ornaski and a guy named Chad McGinty.</p> <p>12 Q. Do you know how long they held that position</p> <p>13 with respect to Mariner East two?</p> <p>14 A. I don't recall exactly.</p> <p>15 Q. Did they specifically brief you on Camp White</p> <p>16 Pine when you took over that role?</p> <p>17 A. Yes.</p> <p>18 Q. What did they tell you?</p> <p>19 A. That there was an essentially a group of folks</p> <p>20 that had tree sits that they set up as a blockade to</p> <p>21 impede the work of pipeline construction for Mariner</p> <p>22 East two, that it was an ongoing legal dispute between</p> <p>23 the Gerharts and I guess at the time Sunoco with an</p> <p>24 imminent domain case, and I believe at that time it had</p> <p>25 already been decided that Sunoco could use that land</p>
<p style="text-align: right;">Page 39</p> <p>1 based on the judge's ruling of immanent domain when I</p> <p>2 came on, and then I remember further hearings that</p> <p>3 occurred after coming on where the same outcome was</p> <p>4 decided in regard to that land area.</p> <p>5 Q. Did they advise you that they believed that</p> <p>6 Ellen or Elise Gerhart or anyone from Camp White Pine</p> <p>7 was planning to damage or destroy pipeline</p> <p>8 infrastructure in Pennsylvania?</p> <p>9 A. I don't recall Ellen or Elise. No, not briefed</p> <p>10 to me, no.</p> <p>11 Q. Did you ever come to believe that Ellen or Elise</p> <p>12 Gerhart planned to destroy or damage pipeline equipment</p> <p>13 in Pennsylvania?</p> <p>14 A. I mean, I think there was a time when Elise,</p> <p>15 because she's younger and maybe was more active on</p> <p>16 social media and would interact with the other affinity</p> <p>17 groups via social media the potential is there, but it</p> <p>18 was never assessed as Elise is going to be a kinetic</p> <p>19 player in the let's go burn down bulldozers game. Ellen</p> <p>20 was actually more -- I mean personally I was worried</p> <p>21 about her from just a human standpoint because she would</p> <p>22 -- she's an older woman and I'm sure she's tough, but</p> <p>23 her walking on to that right-of-way and while there's</p> <p>24 bulldozers going and standing in front of them as</p> <p>25 principled as she is there's a lot of outward about her</p>	<p style="text-align: right;">Page 40</p> <p>1 personal safety. I never thought she -- nor do I think</p> <p>2 anyone else thought she was a threat to assets.</p> <p>3 MR. MARKOS: I don't have any further questions.</p> <p>4 Somebody else might.</p> <p>5 EXAMINATION BY MS. KRAMER:</p> <p>6 Q. Hi, I'm Elizabeth Kramer. I'm the attorney for</p> <p>7 TigerSwan. I have a few questions. I wanted to ask you</p> <p>8 some questions on some of the information you provided</p> <p>9 concerning the lighting device that was used on the</p> <p>10 right-of-way near the Gerhart property. You indicated</p> <p>11 that there was a single lighting device used near or on</p> <p>12 the right-of-way at the Gerhart property; is that right?</p> <p>13 A. Correct, closest to the Gerhart property, yes.</p> <p>14 Across the street from the Gerhart property is where the</p> <p>15 drill pad was and there was a light there, but that had</p> <p>16 nothing to do with -- that was just so the workers could</p> <p>17 see what they were doing at night.</p> <p>18 Q. Understood, but the lighting device that we were</p> <p>19 talking about earlier, do you know who owned that</p> <p>20 device?</p> <p>21 A. I think it's a company called Black Hawk or</p> <p>22 something to that affect, Black something Hawk something</p> <p>23 that -- I'm not sure who introduced that particular</p> <p>24 piece of equipment to TigerSwan. I just know I was</p> <p>25 directed by ETP or TigerSwan to meet with the guy who is</p>

Nikolas McKinnon

<p style="text-align: right;">Page 41</p> <p>1 familiar with it and then figure out how to utilize it</p> <p>2 on the right-of-way.</p> <p>3 Q. Do you know if the construction company had</p> <p>4 asked for that lighting device to be installed on the</p> <p>5 right-of-way near the Gerhart property?</p> <p>6 A. I don't recall who specifically requested that</p> <p>7 piece of equipment.</p> <p>8 Q. Do you know who was operating it or monitoring</p> <p>9 it on a daily basis?</p> <p>10 A. The company -- so essentially the company that</p> <p>11 provided the equipment also monitored the cameras and</p> <p>12 any alerts if, for example, because there was a deer</p> <p>13 fence set up and even if a deer ran through there it was</p> <p>14 also motion sensed so if they got an alert and it was</p> <p>15 a significant one like a human being then they would</p> <p>16 call multiple people.</p> <p>17 Q. Were TigerSwan employees or independent</p> <p>18 contractors actually monitoring the activity on that</p> <p>19 camera connected to the lighting device?</p> <p>20 A. Not to my knowledge, no.</p> <p>21 Q. You said that the lighting device was directed</p> <p>22 specifically at the entrance of the right-of-way,</p> <p>23 correct?</p> <p>24 A. Correct.</p> <p>25 Q. Was it directed at the Gerhart's home?</p>	<p style="text-align: right;">Page 42</p> <p>1 A. No.</p> <p>2 MS. KRAMER: Those are my only questions.</p> <p>3 EXAMINATION BY MR. MARKOS:</p> <p>4 Q. Very briefly about this lighting device, did</p> <p>5 anybody with access to the right-of-way have access to</p> <p>6 the device?</p> <p>7 A. In what way?</p> <p>8 Q. If you could be on the right-of-way, was there</p> <p>9 anything to prevent you from touching or manipulating?</p> <p>10 A. No.</p> <p>11 Q. Who would Black Hawk contact if activity was</p> <p>12 detected by the device?</p> <p>13 A. Just to be clear, I'm not sure if that was the</p> <p>14 actual name. I just remember it was something like</p> <p>15 that.</p> <p>16 Q. Who was contacted if the device detected</p> <p>17 activity?</p> <p>18 A. I believe myself, I think at that time the</p> <p>19 current VP of oil and gas would have been Derrick Burr</p> <p>20 at TigerSwan and probably Frank Reznagle at Energy</p> <p>21 Transfer at least. There may have been more folks.</p> <p>22 Guardian Angel which TigerSwan owned, I think they may</p> <p>23 have -- I think they were in a chat with that kind of</p> <p>24 notification system.</p> <p>25 Q. Do you know whether wild life could trigger the</p>
<p style="text-align: right;">Page 43</p> <p>1 geofence?</p> <p>2 A. Yes, it could.</p> <p>3 Q. Do you know if it did near the Gerhart property?</p> <p>4 A. Yeah, I saw a deer a couple of times. I do</p> <p>5 recall a deer triggering the camera and then I think</p> <p>6 after talking to the company they were able to change</p> <p>7 the algorithm to pick up move a human silhouette rather</p> <p>8 than wild life.</p> <p>9 Q. When the lights were on, what direction did they</p> <p>10 shine?</p> <p>11 A. You would have to orient me, so I believe the</p> <p>12 Gerharts were on the north side of the street, is that</p> <p>13 north, and then that main road ran east, west, so the</p> <p>14 right-of-way ran north, south; is that correct, do you</p> <p>15 guys know?</p> <p>16 Q. I'm trying to pull up the map for you?</p> <p>17 MR. RAIDERS: If I could assist the main road</p> <p>18 runs north, south.</p> <p>19 Q. I will represent to you on Google maps is the</p> <p>20 Gerhart home.</p> <p>21 A. Yes.</p> <p>22 Q. This is 829 running north and south and here is</p> <p>23 the home. You would probably know better than I do if</p> <p>24 this clearly is the right-of-way or not.</p> <p>25 A. It is.</p>	<p style="text-align: right;">Page 44</p> <p>1 Q. Where was the lighting device placed?</p> <p>2 A. Right, down and right, go right, go up, probably</p> <p>3 right in that area.</p> <p>4 Q. Do you know if this is at an elevated point from</p> <p>5 where the house sits?</p> <p>6 A. The house is actually elevated from what I</p> <p>7 remember.</p> <p>8 Q. Could you see the house from this point?</p> <p>9 A. Yeah, during the winter you could because all of</p> <p>10 that foliage that you are seeing in between on the</p> <p>11 Google map image, all of those leaves would have fallen</p> <p>12 during the winter and spring, depending on how fast the</p> <p>13 leaves came back, you could see the house.</p> <p>14 Q. Where my house cursor is, is the approximate</p> <p>15 location of the lighting fixture?</p> <p>16 A. Approximately.</p> <p>17 Q. What direction would the lights shine when they</p> <p>18 were on?</p> <p>19 A. South and a little bit east toward -- I don't</p> <p>20 know if you can share a screen. I can point to it.</p> <p>21 Q. I don't know if I can. Toward that area?</p> <p>22 A. No, it would be toward the house area.</p> <p>23 Q. Toward the Gerhart house?</p> <p>24 A. Right, south and east. I'm sorry, north and</p> <p>25 west, more north than -- I'm sorry, more west than</p>

Nikolas McKinnon

<p style="text-align: right;">Page 45</p> <p>1 north, though.</p> <p>2 Q. Generally in this direction?</p> <p>3 A. Yes, because there was -- it was like an open</p> <p>4 shed if you were to move your cursor more north off the</p> <p>5 right-of-way and now west. Somewhere around there,</p> <p>6 maybe a little bit more south, there's an open shed down</p> <p>7 there that was on the Gerhart property. I think that's</p> <p>8 really the only thing and I recall being on the</p> <p>9 right-of-way and seeing Elise and some other folks in</p> <p>10 that open shed area drinking coffee, eating breakfast,</p> <p>11 yelling at us, things like that. That's the only reason</p> <p>12 I remember, so the only thing I think that light could</p> <p>13 have potentially been seen by is anybody in that open</p> <p>14 shed.</p> <p>15 Q. The lights shined out rather than down, is that</p> <p>16 fair?</p> <p>17 A. Yes.</p> <p>18 MS. KRAMER: Object to form.</p> <p>19 Q. Do you know where on this screen Camp White Pine</p> <p>20 was situated? Again, this is the Gerhart house.</p> <p>21 A. You are in the general area. I think it was a</p> <p>22 little further east.</p> <p>23 Q. East or west?</p> <p>24 A. East.</p> <p>25 Q. Toward Michael Gerhart?</p>	<p style="text-align: right;">Page 46</p> <p>1 A. Yes.</p> <p>2 MR. MARKOS: No further questions from me.</p> <p>3 MS. KRAMER: I just have one followup question.</p> <p>4 Q. If you could approximate distance between where</p> <p>5 the lighting device on the right-of-way on the Gerhart</p> <p>6 property was from the Gerhart home, would you be able to</p> <p>7 approximate that distance?</p> <p>8 A. I would say at least less than a quarter mile,</p> <p>9 but it was a good walk. It looked like when I saw</p> <p>10 people walking back and forth maybe 800 yards,</p> <p>11 approximately, 800 to 1,000 yards.</p> <p>12 MS. KRAMER: Those are my only questions, so</p> <p>13 thank you.</p> <p>14 THE VIDEOGRAPHER: The time is 11:51. We are</p> <p>15 now off the record.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 47</p> <p>1 CERTIFICATE</p> <p>2</p> <p>3 I, STACEY J. ORLICK, a Notary Public and</p> <p>4 C.S.R. of the State of New Jersey, License No.</p> <p>5 XI00226700, do hereby certify that prior to the</p> <p>6 commencement of the examination NIKOLAS McKINNON was</p> <p>7 duly sworn by me to testify the truth, the whole truth</p> <p>8 and nothing but the truth.</p> <p>9 I DO FURTHER CERTIFY that the foregoing is a</p> <p>10 true and accurate transcript of the testimony as taken</p> <p>11 stenographically by and before me at the time, place and</p> <p>12 on the date hereinbefore set forth.</p> <p>13 I DO FURTHER CERTIFY that I am neither a</p> <p>14 relative nor employee nor attorney nor counsel of any of</p> <p>15 the parties to this action, and that I am neither a</p> <p>16 relative nor employee of such attorney or counsel, and</p> <p>17 that I am not financially interested in the action.</p> <p>18</p> <p>19 Notary Public of the State of New Jersey</p> <p>20 My Commission expires June 2022</p> <p>21 Dated:</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

A	ago 13:11 19:13 32:13	17:22 27:3 37:14	24:7 37:16,25	blockade 38:20
a.m 1:17 5:6	agreement 8:6 14:14	apologize 37:3	assumptions 25:12	blond 37:9
able 34:17 37:18 43:6 46:6	ahead 18:22	app 31:2	assurance 16:17	bothering 15:20
above-entitled 1:13	Air 24:16 25:10	appreciate 22:16	attorney 5:14 7:10 40:6	Box 2:20
ABoynton@m... 2:24	aircraft 38:4	approximate 44:14 46:4,7	47:14,16	BOYNTON 2:21
accepted 14:14 14:15	al 1:4,7 5:7 38:10	approximately 20:15 37:6,7	attorney's 14:12	branch 8:23
access 11:10 21:1,3,6 22:7	ALAN 2:21	44:16 46:11	Attorneys 2:5 2:10,16,23 3:3	break 7:3,4,7 36:19
42:5,5	alert 41:14	approximating 12:5,25	3:9	breakfast 45:10
accord 8:16	alerts 41:12	apps 30:19,22 30:25 31:3	authority 28:5,9	brief 32:7 38:15
account 17:21 22:6,14	allegation 19:15	April 1:16 5:5	available 31:4	briefed 39:9
accurate 6:3,20 47:10	ambiguous 6:24	area 21:6 23:10 32:9,18 39:4	Avenue 3:2	briefly 42:4
acronym 15:24 16:1 22:24	amended 25:19	44:3,21,22	aware 18:10,12	broke 31:10
action 1:2 47:15 47:17	analyses 30:10	45:10,21	B	bubble 9:19,21
activated 31:23 31:24	analysis 30:5 34:12	areas 35:11	back 16:9,15 17:22 23:4,11	bulldozers 39:19 39:24
active 39:15	analyst 11:11 17:5 27:8,9	arm 35:14	30:8 44:13	burn 39:19
activity 24:12 41:18 42:11,17	28:7	arrangement 14:5	46:10	Burr 42:19
actual 34:2 42:14	analysts 27:17 28:9	articles 29:9	background 7:21	business 13:24 14:6 34:23
address 13:18 13:20	anarch 34:3	articulate 34:15 34:17	backwards 7:22	businesses 14:9 36:1,1
advise 39:5	anarchism 34:3	ascibe 25:23	based 20:24 26:7 39:1	C
adviser 11:20 13:12 14:25	anarchist 33:17 33:24,25	asked 11:17,19 25:14 29:5	basis 41:9	C 2:1 5:10
15:15 16:4	anarchy 33:18 34:1,20	32:24 38:2	Beckman 17:4	C.S.R 47:4
23:23 24:3,4	and/or 9:19	41:4	believe 7:24 12:24 28:7	call 41:16
27:13 28:4,8	Angel 42:22	asking 7:21	38:24 39:11	called 22:23 40:21
29:15,23 30:21	answer 7:6 22:16 25:3	aspect 26:8	42:18 43:11	camera 41:19 43:5
31:5,11 32:25	34:19	assess 12:10 30:6	believed 39:5	cameras 32:14 41:11
35:8 38:8	answered 37:4	assessed 39:18	bell 26:19	camp 19:23 20:5 20:17,21 21:1
advisers 35:8	answers 6:2,11	assets 40:2	beneficial 29:6 17:10	21:3,6,9,24,24
advising 12:1	Anti 15:17	assigned 11:25	benefit 5:17	22:9,17 23:1
affect 15:21 40:22	anticipate 6:6	assist 43:17	BENSON 3:4	29:24 30:12
affinity 39:16	anybody 21:23 25:20 27:8	assistance 37:18	better 15:4 37:4 43:23	34:12 37:3,11
agency 15:17	29:14 37:14	ASSISTANT 3:1	beyond 35:2	38:15 39:6
	42:5 45:13	associated 25:17	big 16:24	45:19
	anyone's 22:14	assume 12:19 19:1 21:16	bit 31:10 44:19 45:6	CARFLEY 2:22
	Apex 16:15,15 16:20 17:6,7,8		Black 40:21,22 42:11	Carolina 17:7,8
				carry 13:20
				case 5:15 13:8

38:24 Cedar 2:3 26:20 Cehenderson... 3:10 certain 27:2,10 28:17 32:4,9 CERTIFICA... 47:1 Certified 1:14 certify 47:5,9,13 Chad 38:11 chance 14:17 change 43:6 changed 16:24 34:12 charter 24:13 chat 42:23 check 16:17 Chester 3:8 chief 23:25 Chopper 24:16 25:10 Christopher 2:5 5:13 Civil 1:2 6:14 claims 25:24 class 9:3 clear 23:21 42:13 clearly 43:24 client 12:11 35:16 36:3,8 closest 40:13 CMarkos@W... 2:6 coast 25:6 coffee 23:8 45:10 collect 20:7 collected 21:17 collecting 23:10 college 10:7,9 color 37:8,9 come 25:9 31:20 39:11 coming 39:3	commencement 47:6 commencing 1:17 comment 26:12 Commission 47:20 common 33:23 34:1 commonly 35:15 communication 27:2,6 30:19 30:20,22 31:3 companies 33:9 35:4 company 24:13 40:21 41:3,10 41:10 43:6 complaint 13:8 19:12,16,20 25:20 concept 33:17 concerning 40:9 conducted 24:13 confidentiality 14:14 connected 31:19 41:19 connection 26:2 CONNIE 3:9 construct 12:17 construction 12:14 21:3,4 38:21 41:3 consulting 36:7 contact 22:21 23:7 27:24 42:11 contacted 42:16 continue 35:18 contract 28:23 contracting 10:23 contractor 8:1 8:17,19 9:7,9 13:15,17,23	22:8 27:4 contractors 41:18 contracts 8:20 conversations 6:7 coordinate 38:3 coordinated 24:24 coordinating 25:5 copied 16:19 correct 9:5 17:8 17:24 19:3 21:22 40:13 41:23,24 43:14 correctly 26:11 counsel 3:1 4:12 5:8 7:13 17:11 47:14,16 counter 9:21 couple 21:11 43:4 course 16:25 court 1:1 5:4 6:14,16 create 16:1,8 criticized 33:14 crutch 37:19 culture 34:21 current 42:19 cursor 44:14 45:4 curtesy 6:10 <hr/> D <hr/> daily 41:9 Dakota 11:9 damage 39:7,12 DAPL 11:10,13 13:1 28:2 date 5:5 14:19 14:20,23,24 18:6 47:12 dated 23:15 47:21	dates 12:2 DAVIS 3:3 day 35:25 decided 38:25 39:4 deer 41:12,13 43:4,5 defendant 2:16 3:9 Defendants 1:8 2:23 3:3 defense 9:10 defined 29:24 definitely 36:15 delivered 16:12 denote 33:21 Denzel 3:14 5:2 depend 28:21 depending 44:12 depicted 34:20 deponent 5:7 deposed 5:21 deposition 1:6 5:3,15 6:13,25 7:14 deputy 11:12 Derrick 42:19 describe 12:7 31:17 32:5 described 32:13 DESCRIPTI... 4:7 destroy 39:7,12 detect 31:21 detected 42:12 42:16 determination 30:2 determinations 30:10 determined 30:12 device 31:19 32:15 40:9,11 40:18,20 41:4	41:19,21 42:4 42:6,12,16 44:1 46:5 devices 31:7,13 31:17 32:12 DF 4:8,9,10 17:13 difference 5:24 different 6:9 8:19 9:15 10:10,17,19 13:5 14:7 22:17 29:3 34:18 35:10 direct 16:19 27:16 28:5 directed 29:7,9 29:13,14 32:18 40:25 41:21,25 direction 32:18 34:18 43:9 44:17 45:2 directly 16:22 20:11 Dirty 37:9 discharge 11:1 discover 29:23 discussed 33:7 36:14 discussion 36:22 dispute 38:22 distance 46:4,7 distinction 11:22 distinguishing 37:21 distracted 26:17 district 1:1,1 5:4 5:4 document 14:11 14:15,24 17:9 17:15 18:9,23 19:6 21:16 23:4,15 24:15 documents 24:11
--	---	---	--	--

doing 40:17	EHGARTNER	ERE's 15:6,8	eye 37:8,9	flavor 15:22,25
domain 32:22	3:4	ESQ 2:5,10,15	eyeglasses 37:22	flight 24:19
38:24 39:1	either 33:21	2:21,22,22 3:3	eyes 14:12	flown 24:16
dos 32:10	EKramer@L...	3:9		25:24 26:6
draft 17:15 24:4	2:17	essentially 10:1	F	fluctuated 30:4
drafted 17:11,16	elaboration	22:5 38:19	face 5:23,23	fly 24:22,24 25:5
18:9	35:23	41:10	Facebook 19:7	25:10,15 38:4
drafting 32:2	elements 15:21	et 1:4,7 5:7	22:5,6,7,10	flying 25:18
draw 11:22	elevated 44:4,6	ETP 16:18,19,22	25:23	focus 11:15
drill 40:15	Elise 25:24 39:6	40:25	Facebook.com...	foliage 44:10
drinking 45:10	39:9,11,14,18	eventually 11:12	17:18	folks 16:18,20
drones 25:15,18	45:9	33:14 35:9	fair 9:9 10:5	17:22 27:10
38:2	Elizabeth 2:15	everybody's	11:16 18:18	37:11 38:19
DTP 38:4	40:6	5:17	22:19 24:7	42:21 45:9
duly 5:10 47:7	Ellen 1:4 39:6,9	exact 15:23 20:1	34:24 45:16	follow 10:22
DUNSMORE	39:11,19	exactly 15:24	fallen 44:11	follows 5:11
3:4	Elmerton 3:2	28:3 30:16	falsely 25:23	followup 6:12
duty 10:18	employee 7:25	32:17 38:14	familiar 18:24	46:3
dynamically	8:3 13:15,21	exaggerate	19:7,12 33:17	foregoing 47:9
9:20	14:6 22:2	35:17	41:1	Fork 26:20
	47:14,16	examination 4:2	families 9:16	form 9:18 11:6
E	employees 41:17	5:12 40:5 42:3	far 21:5 23:12	11:24 13:4
E 2:1,1 9:4	employment 8:6	47:6	23:14 25:1	14:3 16:6
E-5 9:3	8:12,18	example 32:14	32:20	17:25 18:14
e-mail 13:18,20	ended 32:22	41:12	fast 44:12	19:4,22 20:10
16:18	energy 1:7 5:6	exceptionally	favorite 31:2	20:18,23 21:15
e-mailed 19:1	12:11 16:11	7:4	features 37:22	21:25 22:3,20
earlier 29:25	25:4 28:16,17	executive 9:20	February 30:7	23:2,13 24:9
38:2 40:19	28:18,24 29:4	9:22	federal 15:17	24:20,25 25:8
early 16:14	29:12,14,17	Exhibit 17:3	female 20:14,14	26:15 27:19
ears 37:25	33:8 35:16,21	Exhibit-1 4:8	fence 41:13	28:11 29:2,18
easement 21:5	36:3,11,16	Exhibit-2 4:9	FERC 15:17,18	31:9,15 33:19
25:16 31:8,13	42:20	Exhibit-3 4:9	figure 41:1	33:22 34:14
38:4	enlisted 9:4	18:20	filed 13:8	35:1,20,22
east 11:21 12:1,9	enterprise 9:14	Exhibit-4 4:10	financially	36:12,15 38:5
12:23 13:2,13	entities 33:14	23:16	47:17	45:18
15:1 16:4,14	entity 29:17	exhibits 4:6,12	find 34:3,4,6	formalized 8:5
25:6 29:20,23	entrance 32:20	expenses 13:24	fine 27:23	forms 14:7
31:6,12 32:3	41:22	14:6,9	finish 6:1,5,10	forth 46:10
37:15 38:13,22	environmental	experience 8:21	6:11 7:6	47:12
43:13 44:19,24	15:10,12,20	10:13,15 33:16	fired 8:15	found 34:9
45:22,23,24	23:18	expires 47:20	first 5:16 16:9	frame 26:7
eating 45:10	equipment	extend 6:10	17:10 23:21	Frank 42:20
economy 36:2	12:16 39:12	extent 32:4	five 22:13	friend 22:12
edited 33:14	40:24 41:7,11	35:24	fixed 38:4	front 39:24
EF 17:9	ERE 23:18	extremists 23:18	fixture 44:15	fuel 14:9

function 14:12	20:20 21:1	24:12,16,18,22	38:24	22:5,18,24,25
functions 28:14	35:2 39:19	25:5,9,24 26:3	impede 38:21	23:10 26:8,14
further 39:2	44:2,2	26:6	important 5:25	28:21 35:12,13
40:3 45:22	goes 30:8	helicopters 25:1	6:5,9,20,21	interact 39:16
46:2 47:9,13	going 6:6 14:11	25:14 38:3	IMW 35:14	interest 34:7
<hr/> G <hr/>	14:17 15:3	help 14:24 23:5	include 12:13,16	interested 22:23
gain 10:15	16:19 25:19	HENDERSON	29:1 32:12	36:16 47:17
gained 10:13	39:18,24	3:9	included 33:24	introduced
game 39:19	good 5:13 36:6	hereinbefore	includes 12:19	40:23
gas 42:19	46:9	47:12	incur 14:9	invigorate 36:8
gather 21:21,23	Google 43:19	Hi 40:6	independent 8:1	invigoration
gathered 21:13	44:11	high 9:15 30:6,7	8:17,19 9:7,9	36:10
gathering 9:18	government	30:8	10:23 13:15,17	involve 34:4
22:18	8:20	highlights 24:12	13:23 19:5,19	involved 12:22
general 10:4	graduate 10:11	hired 7:25 11:8	22:8 27:3	18:1,4,5 32:2
13:1 32:5	gross 14:1	home 20:22,22	41:17	33:8,10
45:21	ground 5:16,25	21:1,4 41:25	INDEX 4:1	involvement
Generally 45:2	27:10	43:20,23 46:6	indicated 40:10	18:12
genre 10:2	group 22:7,22	honestly 15:13	indication 35:14	issues 6:15
geofence 43:1	27:17 38:19	Honorable 11:1	indications 9:22	<hr/> J <hr/>
geofences 31:21	groups 39:17	house 44:5,6,8	individual 22:18	J 1:14 47:3
geofencing	Guardian 42:22	44:13,14,22,23	23:6	January 8:8,9
31:23	guards 35:10	45:20	individuals 9:16	30:6
geography	guess 10:4 38:23	HULL 2:22	17:1 18:5	jargon 15:4
20:25	guy 11:19 38:10	human 20:12	32:11	Jersey 1:16 47:4
Gerhard 1:4	38:11 40:25	22:21,23,24,25	industries 9:12	47:19
20:22	guys 43:15	26:8,13 35:12	industry 9:10	JESSICA 3:3
Gerhart 5:6	<hr/> H <hr/>	37:2 39:21	33:16	Jessicdavi@p...
19:17,20 21:2	Hair 37:8	41:15 43:7	infiltrator 19:16	3:5
23:1,3 25:24	hand 32:13	Huntington	information	job 10:20 11:3
25:25 31:8,14	handed 8:7	23:9	19:19 21:13,17	12:7 13:1,2
32:21,21 33:4	19:25	hypothetically	22:15 23:11	28:14,21 36:6
39:6,12 40:10	Harrisburg 2:15	30:5	26:10,12 27:12	36:6
40:12,13,14	2:21 3:2 7:19	<hr/> I <hr/>	40:8	Johnson 26:22
41:5 43:3,20	Hawk 40:21,22	ideology 34:2	infrastructure	26:24 27:1,25
44:23 45:7,20	42:11	identified 23:22	12:20 39:8	Johnson's 28:6
45:25 46:5,6	head 6:22,22	identify 24:15	initial 33:6	joined 11:7
Gerhart's 41:25	headquartered	ideology 33:25	Initially 11:9	joining 10:3
Gerharts 35:11	16:16	34:16,22	26:16	JR 2:21
38:23 43:12	headquarters	illuminate 32:19	installed 41:4	judge's 39:1
gestures 6:24	17:6	image 44:11	intel 27:8,9,17	July 8:14
give 5:16 14:17	hearings 39:2	images 4:9 19:5	28:7,9 35:11	jump 6:11
gives 9:22	held 1:16 32:14	imagine 20:19	37:2	June 18:7,13
glean 22:15	36:23 38:12	immanent 39:1	intelligence 9:19	23:15 26:4
go 10:7,9 18:22	helicopter 23:21	imminent 32:22	11:11 17:5	47:20
			20:7 21:21,23	

K	25:8 26:15	Likewise 6:10	Mariner 11:21	10:22,24
K 5:10,10	27:19,22 28:11	line 27:22	12:1,8,23 13:2	mind 11:22
KANDICE 2:22	29:2,18 31:9	link 17:17	13:13 15:1	minds 34:18
Kari 19:9	31:15 33:19,22	list 16:23,24	16:4,14 29:20	minute 32:13
keep 36:3,9,16	34:14 35:1,20	little 12:3 29:3	29:22 31:6,12	money 33:12,12
36:17	35:22 36:12	31:10 37:2	32:3 37:15	monitored 41:11
kept 36:5	38:5 40:5,6	44:19 45:6,22	38:13,21	monitoring
KERWIN 2:22	42:2 45:18	live 7:16,17	Mariners 11:16	31:19 41:8,18
KHull@mcne...	46:3,12	lived 21:8	11:23,23	mono 34:3
2:25	Kurt 26:18	living 10:3 21:10	mark 17:2 23:16	month 13:11
kind 16:17,21	L	LLC 2:19 24:16	marked 14:12	19:13
20:20,25 27:11	L 2:15 5:10	25:10	Market 2:3,14	months 12:24,25
32:10 42:23	L.P 1:7	LLP 3:7	marking 25:21	morning 5:13
kinetic 39:18	lack 15:3	location 14:10	Markos 2:5 4:3	motion 31:25
know 6:19 7:18	land 38:25 39:4	44:15	5:12,14 14:20	41:14
17:4,20 18:1,3	landscape 20:25	long 7:4,5 11:13	17:2 27:21	move 43:7 45:4
18:16 20:13,14	laundromat	12:22 18:20	36:18 40:3	movies 34:20
20:21 21:8,13	23:7	29:7 38:12	42:3 46:2	multiple 10:10
21:20 22:4	LAVERY 2:13	longer 36:2,4,5	matter 1:13 5:6	17:1 23:9
23:12,14 25:2	LAW 2:8,13 3:7	36:5,9	McGinty 38:11	24:21 26:5
25:13 26:17,22	lay 32:8	look 17:12 19:7	McKINNON	30:9 33:8,13
26:24 27:1	layout 21:17	22:9,9,14 34:2	1:6 3:9 4:3 5:8	41:16
31:6 32:15	leadership 36:14	looked 26:3 37:5	5:19 47:6	N
34:15 37:10,13	learn 10:20 25:9	46:9	McNEES 2:19	N 2:1,9 4:3 5:10
37:13 38:7,12	leave 8:12 10:24	looking 22:5,22	ME2 11:21	5:10,10,10
40:19,24 41:3	11:17	looks 18:24	16:14 28:1,4,8	N-i-k-o-l-a-s
41:8 42:25	leaves 44:11,13	lot 10:20 39:25	30:21 33:24	5:19
43:3,15,23	left 8:16 9:6	low 30:8	mean 10:17 19:7	name 5:2,13,17
44:4,20,21	10:12,22 11:18	lumens 32:17	22:4 34:15,20	5:19 17:16
45:19	31:25	M	35:4 36:13	20:16,17 23:22
knowledge 16:2	legal 38:22	M 5:10	37:25 39:14,20	23:25 24:7
37:23 38:6	let's 7:22 39:19	M-c-K-i-n-n-o...	Meaning 17:23	26:17,22,24
41:20	License 1:15	5:20	means 9:4 23:19	27:1 37:10
knowledgeable	47:4	mailing 16:23	meant 15:24	38:10 42:14
18:17	life 42:25 43:8	main 12:10	media 22:12	named 38:11
known 11:10	light 31:6,12,18	31:21 43:13,17	39:16,17	narrative 15:17
34:11	31:24 32:15,23	maintain 14:13	meet 40:25	29:8
Kramer 2:15 4:4	40:15 45:12	making 21:11	Meriweather	Nate 26:24
11:6,24 13:4	lighting 31:7,13	manager 11:12	26:18	nation 10:21
14:3,19 16:6	32:15 40:9,11	manipulating	Michael 45:25	Navy 8:24
17:25 18:14	40:18 41:4,19	42:9	middle 1:1	near 31:7,13
19:4,22 20:8	41:21 42:4	manpower 33:1	17:17	35:11 40:10,11
20:10,18,23	44:1,15 46:5	map 43:16 44:11	mile 46:8	41:5 43:3
21:15,25 22:3	lights 31:23 43:9	maps 43:19	miles 7:18	nearing 30:17
22:20 23:2,13	44:17 45:15	March 30:8	military 8:20,21	30:17
24:9,20,25			9:6 10:3,17,19	

necessarily 28:15 33:21	21:25 22:3 23:2 24:9,20	47:3	pending 7:5,6	place 6:15 47:11
necessary 6:22	24:25 27:19	Ornaski 38:11	Pennsylvania	placed 44:1
need 7:3	29:2,18 31:9	outcome 39:3	1:1 2:4,9,15,21	places 10:10
needed 6:25	31:15 33:19,22	outer 9:19	3:1,2,8 5:5	23:9
33:1	34:14 35:1,20	outside 21:24	11:20 27:14	Plaintiff 2:5
neither 47:13,15	35:22 36:12	23:1,3	39:8,13	plaintiffs 1:5
never 21:11	38:5 45:18	outward 39:25	people 6:4 12:13	2:10 5:14
39:18 40:1	Objection 17:25	overs 24:22,24	33:11 41:16	plan 32:6
new 1:16 11:18	19:4 20:8,10	25:6	46:10	planet 22:10
18:18 47:4,19	22:20 23:13	oversee 20:11	percent 36:1	planned 39:12
Nicholas 26:22	25:8 26:15	overseeing 12:8	perform 28:13	planning 25:20
27:1	28:11	overseen 33:13	Performing 9:17	39:7
Nick 5:13,21	objective 12:10	owned 25:10	period 8:25 20:1	plans 32:3,24
7:10 26:22	20:20	40:19 42:22	21:9 27:24	play 36:8
27:25 28:6	objects 25:20		30:11	played 31:6
night 21:12	obviously 33:7	P	person 5:23 6:2	player 39:19
31:22,25 40:17	occur 36:10	P 2:1,1	20:3,4,5,9,13	point 8:2 11:15
Nik 14:15,23	occurred 39:3	P.O 2:20	22:17 23:10,12	16:13,18,19,24
37:1	October 7:24	PA 18:1,10,12	26:14 37:3	18:16 19:1
Nikolas 1:6 3:9	office 14:10 18:4	28:25 29:1,7	personal 40:1	20:12 22:8
5:7,19 47:6	officer 9:3 24:1	pad 40:15	personally 39:20	30:3,9,12 44:4
nod 6:22	oil 42:19	page 4:2,7 16:9	personnel 33:15	44:8,20
normal 6:7	Okay 18:22,22	17:10,11,12,13	petty 9:3	pointed 32:23
north 17:7,8	18:22 23:19,19	17:17 18:18	Philadelphia 2:4	POLICE 3:1
43:12,13,14,18	old 37:5	23:21 24:11,15	photographs	position 27:9
43:22 44:24,25	older 39:22	paid 36:4	19:9	36:5 38:12
45:1,4	on-the-job 10:18	paperwork 14:8	physical 37:21	possible 6:8
Notary 1:15	ongoing 26:9	paragraph	physically 27:14	posts 25:23
5:11 47:3,19	38:22	25:21 26:2	pick 43:7	potential 12:11
noted 5:8	open 22:4,6,7	parlance 33:23	piece 40:24 41:7	39:17
notes 1:12	27:11 45:3,6	34:2	pierced 38:1	potentially 28:2
notification	45:10,13	part 21:3,4 25:3	piercings 37:24	45:13
42:24	operating 41:8	participating	Pike 3:7	Pottstown 3:7
nots 32:10	opportunity	32:11	Pine 2:20 19:24	practically 5:24
nuances 35:2	7:13 13:7	particular 33:10	20:6 21:24,24	presence 32:9
number 4:7	order 28:13	33:12 40:23	22:9,18 23:1	Present 3:14
33:15	35:18	parties 33:8	29:24 30:13	pretty 16:24
NURICK 2:19	organization	47:15	34:13 37:3,11	27:2
	17:22	partners 1:7 5:7	38:16 39:6	prevent 42:9
O	orient 43:11	26:20 35:21	45:19	principled 39:25
O 5:10,10	origin 25:25	pass 23:11	pinpoint 14:24	prior 47:5
object 11:6,24	26:10,12,13	pay 37:16	pipeline 11:10	privacy 22:10
13:4 14:3 16:6	Original 4:12	paying 28:17	12:14,17,20	22:14
18:14 19:22	originally 11:11	payment 14:2	28:5,8 29:8	private 9:14
20:18,23 21:15	Orlick 1:14 5:9	payroll 36:17	32:6 38:21	24:13
		PC 2:8	39:7,12	pro 29:8

<p>probably 20:2 20:15 21:16 30:17 42:20 43:23 44:2 proceeding 6:14 proceedings 1:13 produce 32:16 product 11:9 products 28:18 profile 9:15 profit 36:1 program 11:12 progress 17:18 18:1,10,13 28:25 29:1,8 project 11:18 27:10,20 28:1 30:11 31:1 32:3,6 35:9 projects 13:6 promised 28:22 29:1 property 19:17 19:21 21:2 23:1,3 25:25 31:14 32:21,21 33:5 40:10,12 40:13,14 41:5 43:3 45:7 46:6 protection 9:18 9:20,23 protocols 32:10 provide 27:11 28:18 35:18 provided 21:14 25:4 26:12,13 35:7,8,9,11,12 35:13 40:8 41:11 provides 9:21 providing 9:19 9:24 10:14 29:16 34:23 Public 1:15 5:11 47:3,19</p>	<p>published 29:9 pull 23:4 25:19 43:16 purpose 20:5 27:6 31:21 push 36:16 putting 17:9</p> <hr/> <p>Q QA 16:17 quality 16:16 quarter 46:8 question 6:5,12 7:5,6 23:20 25:15 33:1 46:3 questioning 27:22 questions 6:2 7:7 37:1 40:3,7 40:8 42:2 46:2 46:12 quite 18:20</p> <hr/> <p>R R 2:1,21 radical 15:12,21 RAIDERS 2:8 2:10 43:17 ran 41:13 43:13 43:14 rank 9:2 read 13:8,9 14:17 32:8 reading 2:9 14:22 15:11 ready 14:18 17:13,14 23:17 real 20:17 really 29:6 45:8 reason 6:3,9 22:23 30:7 45:11 recall 8:7 14:8 17:21 18:11,15 18:25 19:15,25</p>	<p>20:15,24 21:10 24:18 25:11 28:2 29:4 30:15 31:1,18 35:24 37:5,9 37:23 38:1,14 39:9 41:6 43:5 45:8 receive 11:3 17:1 received 10:19 Recnagle 42:20 recognize 14:15 recollection 16:25 18:2 recommend 32:25 recommendati... 33:6,13 record 3:15 5:1 5:3,8,18 17:2 36:21,22,25 46:15 records 37:16 reference 23:20 referred 35:15 referring 27:20 regard 39:4 regarding 6:15 reimbursed 13:24 14:1,2,8 reimbursement 14:5 related 11:13 25:15 30:20 relation 32:6 relationship 28:23 relative 47:14 47:16 rely 28:13 remember 15:9 15:10,12,23 16:22 18:16 20:1,24 21:11 21:19 23:6</p>	<p>25:11,17 30:3 30:16 31:24 32:1,17,20 36:13 37:12 39:2 42:14 44:7 45:12 remote 14:10 remotely 27:4 report 14:19 16:10 18:6 20:9 26:3,7,8 reported 35:9 Reporter 1:15 reporting 28:22 reports 16:21 represent 43:19 representing 5:14 7:10 requested 41:6 research 34:7 respect 33:4 36:10 38:13 respective 6:1 response 6:23 6:24 responsibilities 12:8 29:22 retained 4:12 5:2 reviewed 7:8 reviewing 14:24 Rice 18:2 Rich@Raider... 2:11 RICHARD 2:10 right 9:25 10:16 17:7 21:21 31:22 34:16 40:12 44:2,2,2 44:3,24 right-of-way 15:19 21:5,7 26:6 32:19,20 33:10,12 39:23 40:10,12 41:2 41:5,22 42:5,8</p>	<p>43:14,24 45:5 45:9 46:5 rights 23:18 ring 26:19 risk 12:13 30:4,6 30:7,8,8,13 risks 12:11,11 12:13,16,19 35:18 road 35:10 43:13,17 Rob 18:2 role 13:14 14:25 16:4 24:3 27:16 28:6 32:24 38:7,16 roles 24:4 ROW 15:19 rules 5:16,25 ruling 39:1 run 29:7 running 43:22 runs 43:18 runway 24:22 rush 25:25 26:9 26:11,13</p> <hr/> <p>S S 2:1 3:3 5:10 safety 32:10 40:1 save 33:12 saw 18:25 43:4 46:9 saying 6:8 35:17 says 15:6,14 19:20 25:23 SCarfley@mc... 2:24 schools 10:18,20 screen 14:12 44:20 45:19 scroll 14:18 18:21 23:17 second 9:3 24:11 25:19</p>
---	--	---	---	--

section 33:10,13	19:20,23 20:5	slightly 6:8	14:25	27:17 28:25
securing 10:21	separately 14:2	small 18:4	State 1:16 3:1	talking 6:4
security 9:24	14:4	Smitherman	47:4,19	29:11 35:5
10:2,14,21	serve 8:23	19:9	States 1:1 5:4	37:11 40:19
11:3,20,25	service 8:21	social 22:12	stay 36:5	43:6
12:8,10,13,22	10:19 28:22	39:16,17	stenographic	tattoos 37:22
13:12 14:25	29:5	somebody 19:20	1:12	team 9:21,23
15:15 16:4	services 9:17,24	23:7 37:16	stenographica...	tech 22:13
23:23,25 24:3	10:2,14 25:4	40:4	47:11	television 34:21
24:4 25:4	29:1,16 35:19	sorry 44:24,25	STEPHANIE	tell 7:16 14:18
27:13 28:4,8	set 22:11 38:20	sort 5:16 6:14	2:22	17:13 18:20
29:15,23,24,25	41:13 47:12	9:19 10:2 14:1	stood 33:11	23:17 38:18
30:13,20 31:5	sets 28:18	31:13	street 2:3,9,14	tenure 16:14
31:11 32:2,5,9	settings 22:11	source 22:4	2:20 40:14	24:22
32:12,24,25	22:14	27:11	43:12	term 10:4 33:17
33:1,9,16	settled 33:15	south 43:14,18	Suite 2:4,14 3:8	terms 13:2 22:13
34:24 35:7,8,8	setup 20:25	43:22 44:19,24	summary 27:11	testified 5:11
35:10,18,18	shake 6:22	45:6	summer 12:2,3	testify 47:7
38:8	share 14:11,11	Sparrow 19:10	20:2	testifying 6:16
see 15:6,14	44:20	speak 6:21,21	sums 32:14	testimony 6:15
17:17 18:6,18	shed 45:4,6,10	speaking 29:5	Sunoco 2:23	47:10
19:9 24:13	45:14	speaks 6:2	28:16 38:23,25	texting 31:3
25:21 40:17	shifted 11:15	specific 24:18	supervision	thank 46:13
44:8,13	shine 43:10	32:18 36:14	27:16	theirs 36:3
seeing 37:23	44:17	specifically 11:8	supervisory	thing 6:7 23:21
44:10 45:9	shined 45:15	18:3,16 24:21	28:5,9	45:8,12
seek 7:13	shop 23:8	25:12 28:22	support 27:9	things 10:21
seen 18:23 19:5	short 7:7	35:5,21 38:15	supported 37:15	45:11
45:13	Shorthand 1:14	41:6,22	sure 18:3 29:7,9	think 7:3,24
sell 35:14,16	show 17:11	specified 27:20	29:11 34:16	11:11 15:11
semester 10:12	Showing 14:14	spell 5:17	39:22 40:23	16:13,18 23:6
send 16:13,15,21	SIANA 3:7	spent 21:11	42:13	26:7 27:3,19
senior 11:20	side 21:5 43:12	Spotsylvania	surveillance	28:20 29:6
13:12 14:25	significant	7:17	9:21	30:9 32:14
15:15 16:4	41:15	spring 15:2	sway 34:17	33:6,23 35:23
23:22 24:3,4	silhouette 43:7	30:18 44:12	swear 5:9	39:14 40:1,21
27:13 28:4,8	Sinclair 3:14 5:2	Springs 3:8	sworn 5:10 6:13	42:18,22,23
29:15,23 30:20	single 40:11	SSA 15:14	6:15 47:7	43:5 45:7,12
31:5,11 32:25	site 17:20 29:8	Stacey 1:14 5:9	system 42:24	45:21
35:7 38:7	SITREP 26:4	47:3		thinking 12:3
sense 7:1 28:19	SITREPs 24:5	stamp 14:20	T	thought 40:1,2
32:7 33:2,25	sits 21:18 38:20	standing 39:24	tactic 36:14	threat 29:24,25
37:4	44:5	standpoint	take 5:15 7:3,4,7	30:13 40:2
senses 22:19	situated 45:20	39:21	11:19,25 36:18	three 13:11
sensored 41:14	six 22:13	start 7:22,23	taken 1:13 47:10	three-minute
sent 16:22 19:16	skill 28:18	started 11:11	talked 24:12	36:18

TigerSwan 2:16 4:8,9,10 7:22 7:23 8:10,13 8:15,18 10:3 11:4,7,17 12:12 13:13,18 14:21 16:3,16 16:20 17:6,9 17:23 19:2,21 21:14,20,23 22:2,25 23:11 23:16 24:24 25:1,5,15,18 26:13 27:4 28:10,17,24 29:13,16,16 31:2,6,12 33:9 34:8 35:5,17 35:25 36:15,17 38:3 40:7,24 40:25 41:17 42:20,22	10:18,19,22 11:3 transcript 1:12 6:3,20,25 47:10 transfer 1:7 5:7 12:11 16:11 25:5 28:16,17 28:24 29:4,14 33:8 35:16 36:3,11,16 42:21 Transfer/Sun... 29:17 transitioned 13:14 Transport 28:19 29:12 tree 21:18 38:20 trigger 42:25 triggered 31:20 triggering 43:5 true 47:10 truth 47:7,7,8 try 36:6 trying 15:9,10 22:16 25:11 43:16 turns 30:7 two 6:4 11:16,21 11:23,23 12:1 12:9,23 13:3,5 13:13 15:1 16:5 27:5 29:20,23 31:6 31:12 32:3 38:13,22 two- 36:18 type 27:8 29:5 32:8	28:20 34:19 understanding 28:15,23 33:23 Understood 34:23 40:18 United 1:1 5:4 updates 35:12 use 10:4,5 16:3 20:17 21:23 31:2 38:3,25 utilize 22:25 30:19 31:12 41:1 utilizing 21:18	ward 15:4 warm 20:2 warning 35:14 warnings 9:22 wasn't 25:20 way 30:4 31:22 42:7 we'll 7:3 17:2 23:16 web 17:20 29:8 weeks 13:11 went 20:22 22:17 23:6 34:1 35:24 weren't 21:3 west 43:13 44:25 44:25 45:5,23 WhatsApp 30:23 wheelchair 37:19 white 19:23 20:6 20:14 21:24,24 22:9,18 23:1 29:24 30:12 34:13 37:3,11 38:15 39:6 45:19 wild 42:25 43:8 WILLIAMS 2:3 wing 38:4 winter 30:17 44:9,12 witness 4:2 5:9 17:12 woman 21:8,20 39:22 word 22:22 36:8 words 15:22 work 7:21,22 8:9 9:9 10:3 11:13 28:13 30:5,19 38:21 worked 9:12,14 11:9 17:5 27:3 27:4 28:1	workers 40:16 working 7:23 11:19 12:14 13:13 14:10 19:2 27:13 34:8 37:14 works 9:20 37:14 world 10:23 worried 39:20 wouldn't 20:19 29:13 write 16:9 written 6:25 wrote 14:13 24:8
TigerSwan's 18:12 34:23	truth 47:7,7,8	video 5:3 31:19 31:20 videographer 3:14 5:1,2 36:20,24 46:14 videotaped 6:19 violence 33:21 34:1,4 violent 34:21 VIP 9:15 Virginia 7:17 visits 21:11 VP 42:19 vs 1:6	west 43:13 44:25 44:25 45:5,23 WhatsApp 30:23 wheelchair 37:19 white 19:23 20:6 20:14 21:24,24 22:9,18 23:1 29:24 30:12 34:13 37:3,11 38:15 39:6 45:19 wild 42:25 43:8 WILLIAMS 2:3 wing 38:4 winter 30:17 44:9,12 witness 4:2 5:9 17:12 woman 21:8,20 39:22 word 22:22 36:8 words 15:22 work 7:21,22 8:9 9:9 10:3 11:13 28:13 30:5,19 38:21 worked 9:12,14 11:9 17:5 27:3 27:4 28:1	X X 11:23 XI00226700 1:15 47:5
Tim 17:4,5	try 36:6	videotaped 6:19	wild 42:25 43:8	Y
time 5:5 7:5 8:2	trying 15:9,10	violence 33:21	WILLIAMS 2:3	yards 46:10,11
8:25 11:15	22:16 25:11	34:1,4	wing 38:4	yeah 17:14 30:9
16:25 18:9	43:16	violent 34:21	winter 30:17	43:4 44:9
20:1,12 21:9	turns 30:7	VIP 9:15	44:9,12	year 10:24 11:14
26:7,9 27:24	two 6:4 11:16,21	Virginia 7:17	witness 4:2 5:9	years 22:13
28:1 30:10	11:23,23 12:1	visits 21:11	17:12	34:10
31:11 33:24	12:9,23 13:3,5	VP 42:19	woman 21:8,20	yelling 45:11
36:20,24 37:15	13:13 15:1	vs 1:6	39:22	York 11:18
38:23,24 39:14	16:5 27:5	W	word 22:22 36:8	younger 39:15
42:18 46:14	29:20,23 31:6	walk 37:18 46:9	words 15:22	Z
47:11	31:12 32:3	walking 39:23	work 7:21,22	Zoom 1:16 5:25
times 26:5 43:4	38:13,22	46:10	8:9 9:9 10:3	0
today 6:15 7:4	two- 36:18	WALLACE	11:13 28:13	1
7:11 8:10	type 27:8 29:5	2:19	30:5,19 38:21	1 17:3
Today's 5:5	32:8	want 5:15 10:13	worked 9:12,14	1,000 46:11
top 18:6	U	16:23 25:13	11:9 17:5 27:3	1:17-cv-1726-...
touching 42:9	ultimately 16:11	30:16 35:16	27:4 28:1	1:2
tough 39:22	unclear 27:23	37:2,4		10:14 1:17 5:6
tower 31:19	understand 6:17	wanted 17:12		100 7:18
towers 31:7,12	25:3 26:11	40:7		1000 2:20
training 10:14				11:23 36:20

Nikolas McKinnon

Page 57

11:30 36:24	3			
11:51 46:14	30 14:20,23			
1166 2:20	304 2:14			
12 1:16 5:5	31 37:7			
1300 2:4	321-5500 3:10			
14 12:25				
145 20:15	4			
147 25:21	40 4:4			
1515 2:3	42 4:3			
16 12:2	484 2:11			
17 4:8,9				
17108 2:15,21	5			
17110 3:2	5 4:3			
18 4:9 8:9 12:24	5'6 20:15			
12:25	509-2715 2:11			
1800 3:2	557-0099 2:6			
19102 2:4	5th 2:9			
1915 4:9 17:10				
1916 4:9 17:10	6			
17:13	606 2:9			
19425 3:8	610 3:10			
19601 2:9	64 14:21			
	64-69 4:8			
2	69 14:21			
20 23:15				
200 3:8	7			
2004 9:1 10:25	717 2:17,23 3:4			
2016 7:24 8:18	787-0388 3:4			
12:3				
2017 14:20,23	8			
15:2 18:7,13	800 46:10,11			
20:2 23:15	81 23:16			
34:11	81-85 4:10			
2018 8:8,14	829 43:22			
30:17	85 23:16			
2022 1:17 5:5				
47:20	9			
20th 26:4	941 3:7			
215 2:6	98 9:1			
225 2:14	99 35:25			
23 4:10				
233-6633 2:17				
237-5248 2:23				
26th 18:6				
27 37:7				